



U.S. Citizenship
and Immigration
Services

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FILE: EAC 01 223 50335 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. On December 3, 2003, the AAO dismissed two motions to reopen as one did not meet the requirements of a motion to reopen the AAO's decision and the other was untimely and did not address all of the AAO's bases for dismissal. The matter is now before the AAO on a new motion. The motion will be dismissed.

The AAO dismissed the appeal on March 24, 2003. On April 17, 2003, Citizenship and Immigration Services (CIS) received a motion and fee from the petitioner stating that the letter constituted his motion to reopen "the case of application of suspension of deportation" dismissed "in the early 90's." CIS received a motion relating to the AAO's decision on May 17, 2003.

On December 3, 2003, the AAO dismissed both motions. The AAO concluded that the April 17, 2003 motion did not address any issues under the jurisdiction of the AAO. The AAO then concluded that the May 17, 2003 motion addressed only one of the bases of the AAO's appellate decision, lack of an advanced degree, and was untimely. The AAO noted that the petitioner was able to prepare a timely submission, as evidenced by the first motion, but did not submit a timely motion relating to the AAO's March 24, 2003 decision.

In his current motion, the petitioner raises humanitarian issues. He submits December 2003 e-mail correspondence between him and an attorney regarding return of his immigration file from the attorney. The current motion, filed January 4, 2004, is timely. The December 2003 e-mail correspondence does not address why the May 17, 2003 motion was not timely submitted.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy.

The current motion is not supported with evidence or legal arguments addressing the bases of the AAO's December 3, 2003 decision: that the motion was late and did not address all of the AAO's appellate concerns. Rather, the current motion is based mostly on humanitarian concerns relating to the petitioner's length of residence in the United States, an irrelevant consideration for the visa classification sought.

The petitioner has not filed a proper motion to reopen or reconsider. His request was not accompanied by any evidence or arguments based on precedent decisions. A request for motion must meet the regulatory requirements of a motion to reopen or reconsider *at the time it is filed*; no provision exists for the Service to grant an extension in order to await future correspondence that may or may not include evidence or arguments.

Finally, motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

ORDER: The motion is dismissed.